Pac. R. R. Co. v. *Public Service Commission*, U. S. Supreme Court, October Term, 1918, No. 65.

A corporation, in accepting the benefits permitted by statute, estops itself from contesting the validity of the statute. *Minneapolis & St. L. Ry. Co.* v. *Gowrie & N. W. Ry. Co.*, 123 Iowa, 543, 99 N. W. 181; *Commonwealth* v. *Southern Pac. Co.*, 150 Ky. 97, 149 S. W. 1105. If, however, accepting the benefits is not a voluntary act, but is procured by duress, no estoppel is created. See *Cicotte* v. *Wayne*, 59 Mich. 509, 513, 26 N. W. 686, 687; BIGELOW, ESTOPPEL, 6 ed., 646. In the principal case, it appears that the payment of the fee in return for the certificate was an act under duress. The issuance of the mortgage bonds was necessary to reimburse the railroad company for expenditures upon its property. Without the certificate, the bonds would be not only unmarketable but, if the statute were held applicable, would be absolutely void, and the corporation would be subject to heavy penalties. *Scottish Union & National Ins. Co.* v. *Herriott*, 109 Iowa 606, 80 N. W. 665; *Swift* v. *United States*, 111 U. S. 22. It is true the Missouri court later held the statute inapplicable, but the corporation was not bound to take the risk of the court deciding otherwise. *Atchison, T. & S. Fe Ry. Co.* v. *O'Connor*, 223 U. S. 280. Accordingly, the jurisdiction of the United States Supreme Court was not excluded on the ground that the company waived its federal rights. *Crosswill* v. *Grand Lodge*, 225 U. S. 246. Since the charge for the certificate was fixed in proportion to the value of the bonds issued, the same being secured by railroad property most of which was in states other than Missouri, the burden on the railroad was apparently so heavy as to constitute an illegal interference with interstate commerce. *Cf. Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1; *International Paper Co.* v. *Massachusetts*, 246 U. S. 135. See JUDSON, INTERSTATE COMMERCE, 3 ed., §§ 21, 22, 39.

SEAMEN — SEAMEN'S ACT OF 1915 — DEDUCTIONS IN AMERICAN PORT OF ADVANCES MADE TO FOREIGN SEAMEN BY A FOREIGN VESSEL IN FOREIGN PORT. — The Seamen's Act (38 STAT. AT L. 1165) provides that "every seaman of a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs a one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of the wages earned. . . . This section shall apply to seamen of foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." A British vessel in a British port made advances to the seamen, a lawful and customary practice by the law of England. On arriving in an American port the seamen demanded half the wages earned. The master deducted the advances made in Liverpool, and the seamen deserted and libeled the ship. *Held*, the libellants cannot recover. *The Talus*, U. S. Supreme Court, October Term, 1918, No. 392.

It is well established that advances made to seamen by any vessel, American or foreign, in any port of the United States are within the statute and illegal. *The Eudora*, 190 U. S. 169; *The Kestor*, 110 Fed. 432. See 15 HARV. L. REV. 411. The cases are in conflict as to advances made in a foreign port by an American or foreign vessel where by the law of such foreign country advances are allowed. *The Windbrush*, 250 Fed. 180; *The Imberhorne*, 240 Fed. 830; *The Ixion*, 237 Fed. 142; *The Belgier*, 246 Fed. 966. See 31 HARV. L. REV. 1169. The reasons for allowing such advances to be deducted on reaching an American port are that the contract is good by the law of the place where made, that Congress had no intention of rendering such contract void or of

imposing a criminal liability thereon, if such were possible. However, such construction, it is submitted, does violence to the English language. The statute states expressly that it is applicable to foreign vessels in American ports. The violation is not the making of a contract in a foreign country, but in deducting such advances in an American port and in refusing to pay one-half of the wages then earned. Though the result reached in the principal case is a desirable one from an international point of view, the real remedy would seem to be with the legislature and not the judiciary.

SHIPPING — FREIGHT — WHEN RIGHT TO FREIGHT BEGINS. — The claimant, a shipowner, contracted to carry a cargo of paper for the libellant from New York to Bordeaux. The bill of lading provided that restraints of princes and rulers were to be excepted and "freight for the said goods to be prepaid in full without discount retained and irrevocably, ship and / or cargo lost or not lost." Before the ship was ready to sail, an embargo was placed upon all vessels whose voyages would bring them within the submarine zone, and clearance was consequently refused to the claimant's ship. The cargo was subsequently discharged and the shipowners refused to return the prepaid freight. *Held*, that the shipowner may retain freight though the ship had not broken ground. *The Gracie D. Chambers*, 253 Fed. 182 (Circ. Ct. App.).

At common law, no freight is due until the cargo has been delivered at the port of destination. *Osgood* v. *Growing*, 2 Camp. 466; *Post* v. *Robertson*, 1 Johns. (N. Y.) 24. As the carrier's contract is entire, it follows, then, that he could not recover for services rendered prior to the ship's breaking ground. *Curling* v. *Long*, 1 B. & P. 634; *The Tornado*, 108 U. S. 342. By the law maritime the result would be the same, since the right to freight begins only upon inception of the voyage. *Curling* v. *Long*, *supra*. See MACLACHLAN, MERCHANT SHIPPING, 5 ed., 546. In England, however, if the contract provides that freight be prepaid, it is not recoverable whether earned or not. *De Silvale* v. *Kendall*, 4 M. & S. 37; *Allison* v. *Bristol Marine Ins. Co.* (1876), 1 A. C. 209. In such a case, therefore, where the cargo is destroyed before the ship breaks ground, but after the time fixed for prepayment of freight, the owner may retain the sums advanced. *Coker* v. *Limerick S. S. Co.*, 34 L. T. R. 18. In the United States the common law applies alike to prepaid freight, and it must be returned when there has been no full performance. *Watson* v. *Duykinck*, 3 Johns. (N. Y.) 335; *Benner* v. *Equitable Ins. Co.*, 6 Allen (Mass.) 222. See 1 PARSONS, SHIPPING AND ADMIRALTY, 210. But a specific contract similar to the one in the principal case clearly suspends the common-law rule and produces the same effect as a provision for prepaid freight under the English law. On the basis of the English decision and as a matter of pure construction, therefore, the principal case seems correctly decided. The dissenting opinion prompted by a desire to avoid a harsh result cannot, however, be supported in view of the clear terms of the contract.

STATUTE OF FRAUDS — INTEREST IN LANDS — VALIDITY OF AN ORAL AGREEMENT TO PAY FOR IMPROVEMENTS TO LAND. — By an oral agreement defendant leased his premises to plaintiff, and promised to allow plaintiff to remove all improvements or to compensate him for their value. After plaintiff had made certain improvements, including the planting of an orchard, defendant terminated the lease and took possession. The plaintiff brings this action on the oral agreement for the value of the improvements. *Held*, that plaintiff could recover on equitable principles as well as on the oral agreement. *Fredell* v. *Ormand Mining Co.*, 97 S. E. 386 (N. C.).

By the better view, an oral agreement for the sale of standing trees is invalidated by the Statute of Frauds. *Green* v. *Armstrong*, 1 Denio (N. Y.) 550; *Hirth* v. *Graham*, 50 Ohio St. 57. *Contra*, *Marshall* v. *Green*, 1 C. P. D. 35.